

**REMARKS/ARGUMENTS**

**DRAWING OBJECTIONS**

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on October 22, 2002 have been approved.

The drawings stand objected to because the leader line for reference numeral 22 should be corrected to indicate the intake opening in plate 19 and not the pumping chamber 17 as shown in Fig. 2.

The Applicants respectfully traverse the objection to the drawings.

In the interests of expediting prosecution of the instant application, and without admission that any amendment is necessary, the Applicants have amended Fig. 2 to correct the alleged error.

A Request for Approval of Drawing Changes is being submitted concurrently herewith. The Applicants aver that no new matter has been added by virtue of these amendments.

The Applicants will submit formal drawings upon receipt of a notice of allowance.

**DRAWING OBJECTIONS UNDER 37 C.F.R. 1.83(a)**

The drawings stand objected to under 37 C.F.R. 1.83(a).

The Applicants respectfully traverse the 37 C.F.R. 1.83(a) objection to the drawings.

In the interests of expediting prosecution of the instant application, and without admission that any amendment is necessary, the Applicants have amended Figures 1 and 2 to correct the alleged errors.

Specifically, the second occurrence of reference numeral 16 and its associated leader line on the left side of Fig. 2 has been deleted; a leader line corresponding to reference numeral 18 has been added to the right side of Fig. 2 to refer to the reservoir; a second occurrence of reference numeral 18 and an associated leader line has been added to the left side of Fig. 2 to refer to the reservoir; reference numerals 19A and 19B have been added to Fig. 1 to refer to the intake and outlet porting holes, respectively; and reference numeral VM and an associated leader line has been added to Fig. 2 to refer to the valve manifold.

The pump element 14, which may be a piston, spur, gear, vane, crescent centrifugal, turbine, or regenerative, is clearly shown in Figs. 1 and 2; thus, no correction is needed. The Applicants submit that they do not have to specifically illustrate each and every one of the illustrative types of pumping elements that were disclosed in the specification. The illustration of the pumping element 14, generally, is sufficient for one of ordinary skill in the art.

A Request for Approval of Drawing Changes is being submitted concurrently herewith. The Applicants aver that no new matter has been added by virtue of these amendments.

The Applicants will submit formal drawings upon receipt of a notice of allowance.

#### **REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH**

Claims 1-22 stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable

one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The Applicants respectfully traverse the 35 U.S.C. §112, first paragraph, rejection of claims 1-22.

In the interests of expediting prosecution of the instant application, and without admission that any amendment is necessary, the Applicants have amended the claims to more clearly define the invention. Additionally, the Applicants have amended Fig. 2 to refer to the intake and outlet ports, 19A and 19B, respectively, which are clearly in fluid communication with the pumping chamber. Furthermore, the Examiner's attention is drawn to the specification, on Page 3, at Lines 14-22, which has been rewritten as follows:

In a preferred embodiment, pump mounting face is external of the pump and uses existing oil pan or transmission fixtures. This provides for the necessary amount of oil for the inlet without using extra space in the pump housing, therefore, using less space inside the oil pan or transmission. In a preferred embodiment, an existing valve manifold VM in a transmission has worm trails 15 configured to provide inlet and outlet porting. A porting plate 19 (which in a preferred embodiment is a valve manifold cover) is provided for providing intake ~~on~~ or outlet porting holes, 19A and 19B, respectively, into the pumping chamber 17. Alternatively, the plate 19 and pump housing 12 could be integral with one another.

Thus, the location and operation of the exit (i.e., outlet) port 19B is clearly disclosed in the specification.

Accordingly, the Applicants submit that the 35 U.S.C. 112, first paragraph rejection of claims 1-22 has been overcome.

**REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH**

Claims 17 and 18 stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The Applicants respectfully traverse the 35 U.S.C. §112, first paragraph, rejection of claims 17 and 18.

In the interests of expediting prosecution of the instant application, and without admission that any amendment is necessary, the Applicants have amended the claims to more clearly define the invention. Additionally, the Examiner's attention is drawn to the specification, on Page 6, at Lines 15-22, reproduced below:

The pump of the present invention also allows on demand operational conditions. Because it is electric, the pump can be turned on, off or modulated, independent of engine speed and to match desirable operating conditions. For example, the pump may be started prior to necessary usage requirements, eliminating ramp-up times and system lag found in start-up conditions of typical mechanical pumps. As an alternate example, the pump can be used when the engine is off to keep the transmission charged, i.e., pressure on the clutches and filling the torque converter.

Thus, the operation of the pump as it responds to on demand requirements of the engine, transmission or transfer case is clearly disclosed in the specification.

Accordingly, the Applicants submit that the 35 U.S.C. 112, first paragraph rejection of claims 17 and 18 has been overcome.

#### **REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Claims 1-22 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Applicants respectfully traverse the 35 U.S.C. §112, second paragraph, rejection of claims 1-22.

In the interests of expediting prosecution of the instant application, and without admission that any amendment is necessary, the Applicants have amended the claims to more clearly define the invention.

Accordingly, the Applicants submit that the 35 U.S.C. 112, second paragraph rejection of claims 1-22 has been overcome.

**REJECTION UNDER 35 U.S.C. §103(a)**

Claims 1-22 as best understood are rejected under 35 U.S.C. §103(a) as being unpatentable over Zepp et al. in view of Ford, Jr. et al.

The Applicants respectfully traverse the 35 U.S.C. §103(a) rejection of claims 1-22.

The standard for obviousness is that there must be some suggestion, either in the reference or in the relevant art, of how to modify what is disclosed to arrive at the claimed invention. In addition, "[s]omething in the prior art as a whole must suggest the desirability and, thus, the obviousness, of making" the modification to the art suggested by the Examiner. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 U.S.P.Q.2d (BNA) 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988). Although the Examiner may suggest the teachings of a primary reference could be modified to arrive at the claimed subject matter, the modification is not obvious unless the prior art also suggests the desirability of such modification. *In re Laskowski*, 871 F.2d 115, 117, 10 U.S.P.Q.2d (BNA) 1397, 1398 (Fed. Cir.1989). There must be a teaching in the prior

art for the proposed combination or modification to be proper. *In re Newell*, 891 F.2d 899, 13 U.S.P.Q.2d (BNA) 1248 (Fed. Cir. 1989). If the prior art fails to provide this necessary teaching, suggestion, or incentive supporting the Examiner's suggested modification, the rejection based upon this suggested modification is error and must be reversed. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d (BNA) 1566 (Fed. Cir. 1990).

The law is also clear that a claim in dependent form shall be construed to incorporate all the limitations of the claim to which it refers. 35 U.S.C. § 112 ¶ 4.

Claim 1, as amended, recites, among other things, a pump for pumping fluid in a vehicle having at least one fluid reservoir, said pump comprising: (1) a pump housing having a pump element; (2) an electric motor operatively attached to said pump housing; (3) a pumping chamber, the pump element operatively coupled to said electric motor, said pumping chamber including an intake and an exit port therein for receiving fluid from said fluid reservoir and pumping fluid; and (4) at least one intake or exhaust port derived from porting configured in a surface adjacent to and not part of the pump, wherein said pump is submerged within said fluid reservoir of said vehicle, wherein said fluid reservoir is selected from the group consisting of a transmission, transfer case, engine reservoir, and combinations thereof.

Neither Zepp et al. and/or Ford, Jr. et al., either alone or in combination therewith, suggests such structure. Specifically, Zepp et al., among other things, does not disclose that the pump is submerged within a fluid reservoir of a vehicle, wherein the fluid reservoir is selected from the group consisting of a transmission, transfer case, engine reservoir, and combinations thereof. Ford, Jr. et al. does not cure the deficiencies in the teachings of Zepp et al.

The Applicants submit that claim 1 is allowable over Zepp et al. and/or Ford, Jr. et al., either alone or in combination therewith. Furthermore, claims 2-21 dependent upon claim 1, are likewise allowable over Zepp et al. and/or Ford, Jr. et al., either alone or in combination therewith.

Claim 22, as amended, recites, among other things, a pump for pumping of fluid from at least one fluid reservoir of a vehicle, said fluid pump comprising: (1) a submerged pump housing; (2) a motor situated in said pump housing and exposed to the fluid in the fluid reservoir, said motor including a self centering armature therethrough; (3) a pump chamber at the base of said pump housing; (4) a pump element operably attached to said armature in said chamber for pumping fluid; (5) a surface adjacent to and not part of the pump housing and operatively associated with the pump chamber for providing inlet or outlet of fluid to the pump chamber contained in the pump housing, and said surface including at least one oil fill passage connecting said fluid reservoir to said pump chamber for intake and pumping of said oil from said fluid reservoir, wherein said pump is submerged within said fluid reservoir of said vehicle, wherein said fluid reservoir is selected from the group consisting of a transmission, transfer case, oil reservoir, and combinations thereof.

Neither Zepp et al. and/or Ford, Jr. et al., either alone or in combination therewith, suggests such structure. Specifically, Zepp et al., among other things, does not disclose that the pump is submerged within a fluid reservoir of a vehicle, wherein the fluid reservoir is selected from the group consisting of a transmission, transfer case, oil reservoir, and combinations thereof. Ford, Jr. et al. does not cure the deficiencies in the teachings of Zepp et al.

The Applicants submit that claim 22 is allowable over Zepp et al. and/or Ford, Jr. et al., either alone or in combination therewith.

Accordingly, the Applicants submit that the 35 U.S.C. 103(a) rejection of claims 1-22 has been overcome.

### **CONCLUSION**

In view of the foregoing, the Applicant respectfully requests reconsideration and reexamination of the Application. The Applicant respectfully submits that each item raised by the Examiner in the Office Action of March 11, 2003 has been successfully traversed, overcome or rendered moot by this response. The Applicant respectfully submits that each of the claims in this Application is in condition for allowance and such allowance is earnestly solicited.

The Examiner is invited to telephone the Applicant's undersigned attorney at (248) 364-4300 if any unresolved matters remain.

Any needed extension of time is hereby requested with the filing of this document.

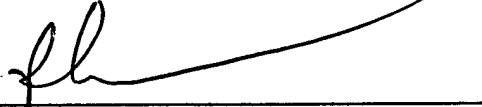
The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1612. A duplicate copy of this letter is enclosed herewith.



Respectfully submitted,

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